

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Jacquelynn Brugman,

Plaintiff

v.

State Farm Mutual Automobile  
Insurance Company, et al.,

Defendants

Case No. 2:24-cv-00888-CDS-BNW

**Order Granting Plaintiff's Motion to  
Remand and Denying Plaintiff's Request for  
Attorney's Fees**

[ECF No. 8]

Defendant State Farm Mutual Automobile Insurance Company removed this case from Eighth Judicial District Court of Nevada. Pet. for removal, ECF No. 1. Plaintiff Jacquelynn Brugman is seeking to remand the case back to state court, arguing both that the parties are not diverse and that the amount in controversy does not exceed \$75,000. Mot. to remand, ECF No. 8 at 3. In response, State Farm admits that plaintiff, and defendant Rogers Mastrangelo Carvalho & Mitchell Ltd. ("RMCM")—a law firm—are both residents of Nevada but argues that it has been fraudulently joined. Response, ECF No. 11 at 3. State Farm also argues that the amount in controversy exceeds \$75,000. *Id.* The motion is fully briefed. *See* Reply, ECF No. 12. Because State Farm has not demonstrated that the amount in controversy exceeds \$75,000, the motion to remand is granted.

**I. Background**

Brugman filed suit in Eighth Judicial District Court of Clark County, Nevada seeking recovery from her insurer, State Farm, and RMCM, who she has designated as agents of State Farm. ECF No. 1 at 8–9. After being hit by an at-fault driver, Brugman suffered injuries to herself and her vehicle. *Id.* at 9. She alleges that she filed a claim with State Farm, which evaluated her damages at \$0.00. *Id.* Brugman now brings breach of contract and statutory unfair claims practice claims against State Farm and tortious and contractual breach of the implied covenant

1 of good faith and fair dealing claims against all defendants. *Id.* at 10–15. She raises a declaratory  
 2 relief claim against State Farm seeking a judicial determination of the rights and benefits under  
 3 the insurance contract. *Id.* at 15–16. In her prayer for relief, Brugman requests “[g]eneral and  
 4 emotional damages, statutory damages, medical expenses, and other special damages in the  
 5 amount in excess of \$15,000.00” as well as interest under NRS 99.040, punitive damages,  
 6 reasonable attorney’s fees and costs, and prejudgment and post-judgment interest. *Id.* at 16–17.  
 7 State Farm removed the case to this court on May 13, 2024.

## 8 II. Legal standard

9 “Federal courts are courts of limited jurisdiction.” *Kokkonen v. Guardian Life Ins. Co. of*  
 10 *America*, 511 U.S. 375, 377 (1994). When a case is filed in state court between parties who are  
 11 citizens of different states, and the amount in controversy is at least \$75,000, the defendant may  
 12 remove the case to federal court. 28 U.S.C. §§ 1332, 1441, 1446. But there is a strong presumption  
 13 against removal jurisdiction, and “federal jurisdiction must be rejected if there is any doubt as to  
 14 the right of removal in the first instance.” *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992). The  
 15 defendant always has the burden of establishing that removal is proper. *Id.*

16 “Diversity removal requires complete diversity, meaning that each plaintiff must be of a  
 17 different citizenship from each defendant.” *Grancare, LLC v. Thrower by and through Mills*, 889 F.3d  
 18 543, 548 (9th Cir. 2018) (citing *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)). But “[i]n  
 19 determining whether there is complete diversity, district courts may disregard the citizenship of  
 20 a non-diverse defendant who has been fraudulently joined.” *Id.* (citing *Chesapeake & O. R. Co. v.*  
 21 *Cockrell*, 232 U.S. 146, 152 (1914)).

22 In determining the amount in controversy, courts first look to the complaint. Generally,  
 23 “the sum claimed by the plaintiff controls if the claim is apparently made in good faith.” *St. Paul*  
 24 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938) (footnote omitted). The \$75,000  
 25 threshold is satisfied if the plaintiff claims a sum greater than the jurisdictional requirement. *See*  
 26 *id.* at 288–89; *Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986).

1 However, like in this case, when removal jurisdiction is challenged by a plaintiff, evidence  
2 establishing the amount in controversy is required. *Dart Cherokee Basin Operating Co., LLC v. Owens*,  
3 574 U.S. 81, 88 (2014). “In such a case, both sides submit proof and the court decides, by a  
4 preponderance of the evidence, whether the amount-in-controversy requirement has been  
5 satisfied.” *Id.* (citing 28 U.S.C. § 1446(c)(2)(B)) (emphasis added). As to the kind of evidence  
6 that may be considered, the Ninth Circuit has adopted the “practice of considering facts  
7 presented in the removal petition as well as any ‘summary-judgment-type evidence relevant to  
8 the amount in controversy at the time of removal.’” *Matheson v. Progressive Specialty Ins. Co.*, 319 F.3d  
9 1089, 1090 (9th Cir. 2003) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir.  
10 1997)). Conclusory allegations are insufficient. *Id.* at 1090 (citation omitted). It is ultimately the  
11 defendant’s burden to prove that the amount in controversy exceeds \$75,000 “when the plaintiff  
12 does not plead a specific amount in controversy.” *Rodriguez v. AT & T Mobility Servs. LLC*, 728 F.3d  
13 975, 981 (9th Cir. 2013).

### 14 III. Discussion

15 Brugman asserts that this action should be remanded to state court because the  
16 defendant cannot meet its burden establishing that the amount in controversy in this action  
17 exceeds \$75,000. ECF No. 8 at 3. In her complaint, Brugman seeks “General and emotional  
18 damages, statutory damages, medical expenses, and other special damages in the amount in  
19 excess of \$15,000.00” as well as interest under NRS 99.040, punitive damages, reasonable  
20 attorney’s fees and costs, and prejudgment and post-judgment interest. ECF No. 1 at 16–17. State  
21 Farm insists that the claimed amount exceeds \$75,000 because Brugman’s underinsured motor  
22 vehicle (UIM) policy claim alleges that she has incurred medical specials of \$28,254.18, “with a  
23 recommendation from Dr. Ryan West for a course of future treatment with an estimated cost of  
24 \$395,600.” Statement concerning removal, ECF No. 7 at 3. State Farm states that Brugman has  
25 already been paid \$100,000 from her policy, so her claimed damages are, at a minimum \$125,000.  
26 *Id.* It also cites a number of bad faith verdicts in Nevada as proof of the amount in controversy.

1 *Id.* at 4; *see also* ECF No. 11 at 20. In her motion to remand, Brugman admits that her medical  
2 specials are “less than \$29,000.” ECF No. 8 at 13.

3       Regarding defendant’s assertions about the future medical expenses, State Farm makes  
4 nothing but bald, conclusory assertions. Although Brugman does not contravene these  
5 allegations, State Farm had three opportunities—the petition for removal, the statement of  
6 removal, and its response to the motion to remand—in which it could have attached proof of the  
7 claimed \$395,600 in future medical damages. Yet, despite these opportunities, there is no  
8 summary judgment-type evidence—documents or declarations—in the record from which the  
9 court can verify the amounts sought in future medical expenses. Additionally, the \$100,000 paid  
10 by the at-fault driver’s insurance is not at issue. *See Willer v. Allied Prop. & Cas. Ins. Co.*, 2010 WL  
11 11537798, at \*2 (D. Mont. Jan. 21, 2010) (“The amount an insurer has already paid for a claim does  
12 not impact the amount in controversy because such amount is not ‘in controversy.’”); *see also*  
13 *Bakken v. State Farm Ins. Co.*, 87 F. App’x 674, 675 (9th Cir. 2004) (deducting amount already paid  
14 out by insurance from the amount in controversy calculation).

15       Putting plaintiff’s claim that her medical specials are “less than \$29,000” aside, what  
16 remains are State Farm’s citations to a series of bad faith Nevada cases in which payouts far  
17 exceeded the \$75,000 threshold due to the award of additional general damages or punitive  
18 damages. Punitive damages may be considered part of the amount in controversy if they are  
19 properly pled. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (“It is well established  
20 that punitive damages are part of the amount in controversy in a civil action.” (citation  
21 omitted)). Courts recognize that to include punitive damages in the amount in controversy, “the  
22 party asserting jurisdiction must establish that punitive damages would be permitted under the  
23 applicable state law based on the conduct alleged.” *In re Volkswagen “Clean Diesel” Mktg., Sales Pracs.,*  
24 *& Prod. Liab. Litig.*, 2019 WL 1501577, at \*4 (N.D. Cal. Apr. 5, 2019). The party seeking jurisdiction  
25 must then demonstrate the amount of punitive damages in controversy, which can be  
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1 established by “evidence of jury verdicts in cases involving analogous facts.” *Surber v. Reliance Nat.*  
2 *Indem. Co.*, 110 F. Supp. 2d 1227, 1232 (N.D. Cal. 2000).

3 Under Nevada law, punitive damages are only awarded “when the plaintiff proves by  
4 clear and convincing evidence that the defendant is ‘guilty of oppression, fraud or malice,  
5 express or implied.’” *Bongiovi v. Sullivan*, 138 P.3d 433, 450 (2006). Brugman’s complaint alleges  
6 that State Farm’s “conduct in breaching the implied covenant of good faith and fair dealing was  
7 willful, wanton, and in reckless disregard of BRUGMAN’s interests to such an extent as to  
8 constitute oppression, fraud, and/or malice toward BRUGMAN, entitling BRUGMAN to  
9 punitive damages.” Compl., ECF No. 1 at 12; *see also* ECF No. 1 at 14 (same). It also alleges that  
10 State Farm’s “conduct in violating the Unfair Clams Practices Act was willful, wanton, and in  
11 reckless disregard of BRUGMAN’s interests to such an extent as to constitute oppression, fraud,  
12 and/or malice toward BRUGMAN, entitling BRUGMAN to punitive damages.” *Id.* at 15. Thus,  
13 although a punitive damages award exceeding the jurisdictional threshold could theoretically be  
14 awarded in this case, it is still the defendant’s responsibility to prove that such an award is more  
15 likely than not, based on the alleged facts. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403–04  
16 (9th Cir. 1996).

17 State Farm has not met its burden. First, it does not point to sufficient allegations in the  
18 complaint that could even establish a claim of fraud. *E.g., Gaus*, 980 F.2d at 567 (explaining that a  
19 defendant’s conclusory allegations are insufficient to overcome the presumption against removal  
20 or to meet the defendant’s burden of supporting its removal petition with specific facts). Not  
21 once in its response does State Farm allege that Brugman has provided a factual basis for her  
22 fraud claims. Further, although they point to other insurance bad faith cases in Nevada, they do  
23 not point to any analogous facts to the case at bar. There is no analysis whatsoever explaining  
24 “why a similar award should be anticipated under the facts of this case.” *Casas v. Geico Indem. Co.*,  
25 2013 WL 6284152, at \*2 (D. Nev. Dec. 4, 2013) (granting remand on similar grounds); *see also*  
26 *Padilla v. State Farm Mut. Auto. Ins. Co.*, 2024 WL 2395679, at \*3 (D. Nev. May 22, 2024). Without

1 allegations of specific conduct, and without “summary-judgment-type evidence” of any alleged  
2 specific conduct, I cannot conclude that it is “more likely than not” that punitive damages in this  
3 case, combined with the other damages Brugman seeks, would satisfy the amount in controversy  
4 requirement for diversity jurisdiction. Therefore, State Farm has failed to meet its burden and  
5 thus, remand is in order.<sup>1</sup>

6 Because I find that this court lacks jurisdiction and Brugman’s case must be remanded  
7 back to the state court, I must address Brugman’s request for attorney fees in filing this motion.  
8 ECF No. 8 at 12–13. “An order remanding the case may require payment of just costs and any  
9 actual expenses, including attorney fees, incurred as a result of the removal.” 28 U.S.C. § 1447(c).  
10 “Absent unusual circumstances, courts may award attorney’s fees under § 1447(c) only where  
11 the removing party lacked an objectively reasonable basis for seeking removal. Conversely, when  
12 an objectively reasonable basis exists, fees should be denied.” *Martin v. Franklin Cap. Corp.*, 546 U.S.  
13 132, 141 (2005).

14 Brugman argues that State Farm has “presented no objectively reasonable basis to  
15 support its decision to remove the case[.]” *Id.* at 13. I disagree. Although State Farm ultimately  
16 did not meet the burden to overcome the jurisdictional threshold for the amount in controversy,  
17 because it points to Brugman’s supposed future medical damages of \$395,600 and Brugman does  
18 *not* controvert or contest this assertion, I find that removal of this case was not objectively  
19 unreasonable. Therefore, I find that an award of Brugman’s attorney’s fees is not warranted.

#### 20 IV. Conclusion

21 IT IS THEREFORE ORDERED that Brugman’s motion to remand [ECF No. 8] is  
22 GRANTED.

23 IT IS FURTHER ORDERED that Brugman’s request for attorney’s fees [ECF No. 8] is  
24 DENIED.

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26 <sup>1</sup> Because I find that the defendant has not demonstrated that the amount in controversy exceeds \$75,000,  
I do not address the question of fraudulent joinder raised by defendant.

1 The Clerk of Court is kindly instructed to remand this matter to the Eighth Judicial  
2 District Court, Case No. A-24-890227-C, Department 11, and to close this case.

3 Dated: January 16, 2025

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6 Cristina D. Silva  
7 United States District Judge  
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